

NO. 13-0561

---

IN THE SUPRME COURT OF TEXAS

---

JEFFREY C. GRASS,

*Petitioner,*

v.

KNAPP MEDICAL CENTER, INC.,

*Respondent.*

---

ON PETITION FOR REVIEW FROM THE THIRTEENTH COURT OF APPEALS,  
CORPUS CHRISTI, TEXAS (CASE NO. 13-12-00099-CV)

---

**BRIEF OF *AMICI CURIAE* THE HONORABLE ARMANDO MARTINEZ, THE  
O.W.L.S., TEXAS MEDICAL ASSOCIATION AND AMERICAN MEDICAL  
ASSOCIATION**

---

Donald P. Wilcox  
State Bar No. 21449000  
Jeffrey S. Gdula  
State Bar No. 24056729

*Attorneys for Amici Curiae The  
Honorable Armando Martinez, the  
O.W.L.S., Texas Medical Association and  
American Medical Association*

Texas Medical Association  
401 West 15th Street  
Austin, Texas 78701  
Phone: (512) 370-1300  
Fax: (512) 370-1636

**TABLE OF CONTENTS**

Table of Contents..... ii

Index of Authorities..... iv

Statement of Interest of Amici Curiae..... 1

Statement of the Case ..... 3

Issues Presented..... 3

Statement of Facts ..... 3

Summary of the Argument ..... 3

Argument ..... 5

I. Review of this case is warranted ..... 6

    A. Experiences in Weslaco since the request for information was made are precisely why the statute was enacted..... 6

    B. The effects of the Court of Appeals’ decision will be felt across the state..... 7

II. Knapp Medical Center is not exempt from complying with the disclosure requirements of TEX. BUS. ORG. CODE § 22.353. .... 8

    A. The legislative history of Texas Business Organizations Code §§ 22.353 and 22.355(2) makes it clear that corporations like Knapp Medical Center, who seek out and rely on donations from the public, are to be held accountable to that same public by keeping and making available certain financial records.. .... 8

    B. The Knapp Medical Center Foundation is a sham corporate entity which exists solely for the purpose of funding the Knapp Medical Center.....10

III. Public policy requires accountability for hospitals that rely on donations..... 13

    A. Texas public policy is established by the Texas legislature, not by the non-profit entities it regulates.. .... 13

<b>B. Public policy demands an even higher burden of accountability for hospitals.....</b>	<b>16</b>
Conclusion and Prayer.....	18
Certificate of Service.....	19
Certificate of Compliance.....	20
Appendix.....	21

## INDEX OF AUTHORITIES

### Cases

<i>Texas Appellate Practice and Educational Resource Center v. Patterson</i> , 902 S.W.2d 686 (Tex. App.—Austin 1995, writ denied) .....	9-10
<i>Castleberry v. Branscum</i> , 721 S.W.2d 270 (Tex. 1986) .....	12

### Statutes and Regulations

TEX. BUS. ORG. CODE § 12.151 .....	16
TEX. BUS. ORG. CODE § 22.352 .....	10, 11
TEX. BUS. ORG. CODE § 22.353 .....	3, 5, 8, 10, 11, 12, 13, 14, 15, 16, 18
TEX. BUS. ORG. CODE § 22.354 .....	16
TEX. BUS. ORG. CODE § 22.355 .....	3, 5, 8, 9, 10, 12, 13
TEX. REV. CIV. STAT. ANN. Art. 1396-2.23A .....	8, 9-10

### Other Authorities

Jeffrey C. Grass, American Bar Association, <i>The Impact of Obamacare on Financial Disclosure Laws for Nonprofit Hospitals: Some Say They Don't Go Far Enough</i> (December 2013), <a href="http://www.americanbar.org/publications/gpsolo_ereport/2013/december_2013/impact_obamacare_financial_disclosure_laws_nonprofit_hospitals.html">http://www.americanbar.org/publications/gpsolo_ereport/2013/december_2013/impact_obamacare_financial_disclosure_laws_nonprofit_hospitals.html</a> . .....	8
Martin Makary, <i>Rising Executive Compensation at Children's Hospitals Threatens The Public Trust</i> , Health Affairs Blog (September 14, 2012), <a href="http://healthaffairs.org/blog/2012/09/14/rising-executive-compensation-at-childrens-hospitals-threatens-the-public-trust">http://healthaffairs.org/blog/2012/09/14/rising-executive-compensation-at-childrens-hospitals-threatens-the-public-trust</a> .....	14
Consumers Union Southwest Regional Office, <i>Preserving the Charitable Trust: Nonprofit Hospital Conversion in Texas</i> (July 1998), <a href="http://www.consumersunion.org/health/txconversion798/txconver10-798.htm">http://www.consumersunion.org/health/txconversion798/txconver10-798.htm</a> .....	15

**STATEMENT OF INTEREST OF *AMICUS CURIAE***

State Representative Armando Martinez (District 39) served on the Knapp Medical Center Board of Directors from July 2006 until March 2010. Prior to appointment on the Board, Rep. Martinez informed the Board that he would need to be absent from meetings when he was in Austin on State business. He was told this would not be a problem. In his role as a Board member, Rep. Martinez served as the chair of the finance committee. Once he began asking for financial documents, and became vocal in his concerns about access to financial information as a board member, he was asked to resign. He did not, and was subsequently dismissed from the Board, allegedly due to absenteeism.

The O.W.L.S. (Objective Watchers of the Legal System) are an unincorporated association that follows cases of interest in the Weslaco area. Members attend legal proceedings in an attempt to make sure there is transparency when it comes to issues affecting the interests of Weslaco's citizens. The O.W.L.S. have approximately 15 members. With regard to Knapp Medical Center, its stated purpose is to promote the most effective and economical health care facility for the community.

The Texas Medical Association (TMA) is a private, voluntary, non-profit association of more than 47,000 Texas physicians and medical students. TMA was founded in 1853 to serve the people of Texas in matters of medical care, prevention and cure of disease, and improvement of public health. Today, TMA's maxim continues in the same directions: Physicians caring for Texans. TMA's diverse physician members

practice in all fields of medical specialization. TMA supports Texas physicians by providing distinctive solutions to the challenges they encounter in the care of patients.

The AMA is the largest professional association of physicians, residents and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all United States physicians, residents and medical students are represented in the AMA policy making process. The objectives of the AMA are to promote the science and art of medicine and the betterment of public health. AMA members practice in every medical specialty area and in every state, including Texas.

The AMA joins this brief on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state, plus the District of Columbia, whose purpose is to represent the viewpoint of organized medicine in the courts.

In this case, Rep. Martinez represents the interests of his constituents from District 39 (which includes the city of Weslaco) as well as the citizens of Texas. These interests include the health care and safety of patients treated at Knapp Medical Center. The O.W.L.S. have an interest (among other things) in promoting the most effective health care facility for Weslaco. TMA and the AMA have an interest in the health care and safety of patients treated by TMA and AMA physician members on staff at Knapp Medical Center in Weslaco, Texas. The Appellee in this case represents members of

TMA and AMA who are advocating on behalf of their patients and the community in Weslaco.

Rep. Armando Martinez, the O.W.L.S., TMA and AMA (hereinafter referred to as “Amici”) received no compensation or fees in connection with the preparation or submission of this brief and will provide all attorney fees incurred in connection herewith.

### **STATEMENT OF THE CASE**

Amici adopt the Statement of the Case of the Petitioner.

### **ISSUES PRESENTED**

Amici comment on the following issues:

1. Review of this case is warranted.
2. The trial court correctly ruled that § 22.355 did not exempt the hospital from its disclosure requirements under § 22.353.

### **STATEMENT OF FACTS**

Amici adopts the Statement of Facts of the Petitioner.

### **SUMMARY OF THE ARGUMENT**

KMC created KMCF in an attempt to avoid the requirements of a statute enacted to require financial disclosure of certain non-profit corporations. The exception at issue in

this case would allow “a corporation that does not intend to solicit and receive and does not actually raise or receive during a fiscal year contributions in an amount exceeding \$10,000 from a source other than its own membership” to avoid complying with the requirement regarding financial record-keeping and disclosure requirements of non-profit corporations.

KMC relies on contributions from the public in order to provide services. As a steward of those contributions, it should be held accountable for those funds. The state of Texas recognizes that and has enacted laws designed to protect members of the public who wish to contribute to non-profit organizations. These laws are not burdensome. All they require is that non-profit corporations who solicit and receive large contributions from the public keep financial records, books and annual reports and make those available to the public for three years.

While there is nothing wrong with non-profit corporations soliciting donations from the public, there is something wrong with those corporations creating sham entities in order to circumvent the laws designed to protect the public by making the financial affairs of the non-profit open to the public. The legislative history and citing cases of the exception make its purpose clear. The sequence of events strongly suggests that KMC created KMCF to circumvent the requirement of accountability. Such tactics to avoid legislative intent should not be permitted. KMC solicits and actually receives large contributions from the public and should be required to comply with the law by making financial records available to the public.

If the court of appeals' ruling is allowed to stand, the legislative intent behind the statute will be frustrated, and the non-profit hospitals across the state will continue to hide their financial records from the public.

### ARGUMENT

Plaintiff Knapp Medical Center ("KMC") filed an original petition for declaratory judgment, asserting that it is exempt from complying with the defendant's request for the production of financial records. KMC argues that Section 22.355(2) of the Texas Business Organizations Code allows it to avoid complying with Section 22.353 because it established the Knapp Medical Center Foundation ("KMCF") to solicit donations from the public rather than KMC soliciting donations itself.

This case warrants review by this Court because of how important its outcome is, not only to the people of Weslaco, Texas, but to residents across the state who are served by non-profit community hospitals. Amici assert that KMC does solicit donations from the public, and does so through a foundation it established for that purpose and to try to circumvent the requirement of accountability. Based on the legislative history of the relevant code provisions (and the only potentially available exception in this case), corporations which rely on the support of public donations cannot be allowed to avoid compliance by setting up a foundation to solicit the public funds on their behalf. Public policy demands accountability from non-profit corporations, especially hospitals, who solicit donations from the public. If that were not the case, the statute would never have been passed into law.

**I. Review of this case is warranted.**

**A. Experiences in Weslaco since the request for information was made are precisely why the statute was enacted.**

Physicians practicing at KMC began to notice strange decisions being made by the administration. Physicians having different priorities than hospital administration on budget issues are not unusual, but what was happening at KMC was different in the physicians' minds. KMC was seemingly spending donated funds on extravagant salaries and bonuses, on unneeded projects, equipment and renovations and on curious contracts from suppliers that either didn't improve patient care or didn't make sense for a hospital with the mission and size of KMC.

Many physicians serving on the KMC Medical Staff became concerned that the hospital seemed focused on making itself ripe for purchase rather than on providing high-quality care for the community it served. These physicians were so concerned that they hired an attorney to look into the suspicious behavior. As part of his representation their attorney, Jeffrey Grass, requested financial information about the hospital. For his trouble, Mr. Grass was sued.

The request for financial information was made over 4 years ago. Since that time the hospital publicly courted several potential purchasers and even put out a press release announcing a sale to a for profit hospital system in spite of a deed restriction requiring the hospital to remain non-profit. (This "sale" was later undone).

Most recently, the hospital announced a "transaction" with Prime Healthcare Foundation, the non-profit foundation of a for-profit hospital system, perhaps hopeful

that structuring it in this way would avoid further scrutiny by the agencies that regulate non-profit hospitals.

These actions did not go unnoticed by the Weslaco Health Facilities Development Corporation, who filed a lawsuit against KMC, the administrator, the board of directors, the for profit hospital system as well as it's non-profit foundation. (See Appendices "1-3"). The City of Weslaco was so concerned by the "transaction" partner that it decided to intervene in the lawsuit, stating "(i)ntervenor asserts that Prime Healthcare Foundation is a sham corporation created to acquire the Hospital Property in the Prime Healthcare Services' chain in an effort to circumvent the restrictive covenants that require the Hospital Property be "administered, operated, maintained, occupied, and used. . . exclusively for. . . a not-for-profit hospital and health care delivery system."<sup>1</sup>

**B. The effects of the Court of Appeals' decision will be felt across the state.**

While the physicians hiring an attorney, the joining in a court of appeals amicus brief by Representative Martinez and the O.W.L.S., the filing of a lawsuit by the Weslaco Health Facilities Development Corporation and the intervention in that lawsuit by the City of Weslaco are clear indications of the importance of this issue to the citizens of Weslaco, the outcome of this lawsuit affects people across the state who are served by non-profit hospitals.

This fact was certainly not lost on the potentially affected Texas hospital systems as the Texas Hospital Association, Texas Association of Voluntary Hospitals, Texas

---

<sup>1</sup> City of Weslaco's Plea in Intervention (Appendix "4").

Organization of Rural and Community Hospitals, Christus Health, Memorial Hermann Healthcare System, The Methodist Hospital System, Texas Children’s Hospital and Texas Health Resources all filed amicus briefs at the court of appeals arguing that they should not have to be transparent to the public even though they all seek contributions from the public and assert that they are there to serve the public.

Financial disclosure laws are becoming increasingly more important nationally as we transform our healthcare system in an effort to reduce cost. The recent trend in federal laws in this area is to remedy the lack of transparency and accountability by non-profit hospitals. (See Appendix “5”).

**II. Knapp Medical Center is not exempt from complying with the disclosure requirements of TEX. BUS. ORG. CODE § 22.353.**

**A. The legislative history of Texas Business Organizations Code §§ 22.353 and 22.355(2) makes it clear that corporations like Knapp Medical Center, who seek out and rely on donations from the public, are to be held accountable to that same public by keeping and making available certain financial records.**

When the Texas Business Organizations Code was being developed, the drafters looked to the then-current law (Article 1396-2.23A of the Texas Non-Profit Corporation Act) regarding financial record-keeping and disclosure requirements of non-profit corporations. The drafters adopted this code, with only a minor change—which did not affect the relevant exception in this case, clause (2)—and stated “no substantive changes intended” in their notes. TEX. BUS. ORG. CODE § 22.355, Revisors’ Note. Since the adoption of the Texas Business Organizations Code, there have been some minor changes to Section 22.355, but none of these modifications substantively affected clause (2).

While Section 22.355(2) does not have any citing cases or substantial legislative history, its predecessor, Article 1396-2.23A(E)(2), has both.

Therefore, the best indication of the legislative intent behind the exception contained in § 22.355(2) can be found in the background section of the bill analysis of Article 1396-2.23A:

During the last interim, the author attempted to conduct a study of a non-profit drug rehabilitation program in Houston. This program had been soliciting funds from the public and portrayed itself as a charitable endeavor. However, there were rumors that its funds were being used for investments in such businesses as nightclubs. During the six month investigation, the author of this bill was unable to determine how the program's funds were being used because the records were inadequate. *A major recommendation from the study was that Texas law should be amended to require non-profit organizations soliciting funds from the public to keep adequate records showing how the funds were actually being used.*

Senate Comm. on Bus. and Indus., Bill Analysis, Tex. S.B. 857, 65th Leg., R.S. (1977) (emphasis added). The bill analysis also reveals the purpose of the bill: “S.B. 857 amends current law to require non-profit corporations *soliciting funds from the public* to keep certain financial records.” *Id.* (emphasis added).

In the primary interpreting case, *Texas Appellate Practice and Education Resource Center v. Patterson*, 902 S.W.2d 686 (Tex. App.—Austin 1995, writ denied), the court held that the exemption found in Tex. Rev. Civ. Stat. Ann. Art. Article 1396-2.23A(E)(2) applied to funds solicited from the general public and not grant funding or donations of in-kind services (as was the situation in *Patterson*).

In its interpretation, the court developed an accountability test:

The purpose, legislative history, and circumstances under which S.B. 857 was enacted reveal that the statute was narrowly drawn to remedy a specific problem: lack of accountability. The legislature designed Article 1396–2.23A as a

mechanism for making nonprofit corporations accountable for donations solicited from the public. In the absence of a problem, there is no need for a remedy. Thus, organizations for whom lack of accountability is not an issue do not fall within the scope of Article 1396–2.23A.

*Id.* at 689.

The test reveals that the court limits the application of Article 1396-2.23A to entities that are not held accountable to their donors in other ways. Because the language of Article 1396-2.23A(C) was adopted almost identically into § 22.355(2), the accountability test developed by the court in *Patterson* should also apply to interpretations of § 22.355(2).

In the present case, KMC claims that it should be exempt from producing the requested financial records under § 22.355(2). Unlike *Patterson*, however, accountability here *is* otherwise lacking. KMCF exists solely to support KMC. If KMC’s financial records are not required to be maintained and available to the public under §§ 22.352 and 22.353, the purpose of the statute, “to require non-profit organizations soliciting funds from the public to keep adequate records showing how the funds were actually being used,” is frustrated. Senate Comm. on Bus. and Indus., Bill Analysis, Tex.S.B. 857, 65th Leg., R.S. (1977). Since KMC receives far in excess of the \$10,000 per year threshold of funds solicited from the public, it should be required to keep adequate financial records and make those records available to the public.

**B. The Knapp Medical Center Foundation is a sham corporate entity which exists solely for the purpose of funding the Knapp Medical Center.**

KMC solicits contributions from the public. It does so through KMCF. The only reason KMCF exists is to solicit donations from the public on behalf of KMC. Indeed,

KMCF's Articles of Incorporation state that KMCF "is organized for the sole benefit of, and the specific purpose of supporting the activities and purposes and fostering the well-being of Knapp Medical Center of Weslaco, Hidalgo County, Texas..." (See Appendix "10"). The registered agent for both KMC and KMCF is James A. Summersett III, CEO of KMC (See Appendices "11" and "12"). James A. Summersett III<sup>2</sup> is also the Administrator of KMCF's Board of Directors. (<http://www.knappmedfoundation.org>) In fact, the legislatively crafted exemption at issue in this case became effective in 1980. Interestingly, the KMCF was formed in 1981 (See Appendix "7").

When members of the public are solicited by KMCF, and decide to contribute money, they are actually contributing to KMC. This isn't a secret. The public knows they are actually contributing to KMC. According to KMCF's website<sup>3</sup>, "[m]ore than \$6 million" in public donations have been given to KMC by KMCF. In 2011 alone, KMCF was able to give KMC more than \$700,000. *Id.* The KMCF webpage noted that "private donations are vitally important to Knapp Medical Center," but that language has been removed since TMA's original amicus curiae brief was filed with the district court. KMCF only exists because KMC believes that it can avoid accountability by having KMCF solicit contributions from the public.

Sections 22.352 and 22.353 would be rendered meaningless if non-profit corporations could simply create sham (dummy) entities to solicit donations. Texas law

---

<sup>2</sup> James A. Summersett III was also the Chairman of HOSPAC (Texas Hospital Association's Political Action Committee) in 2012-2013. (See Appendix "14") The Texas Hospital Association filed an amicus curiae brief supporting KMC at the court of appeals in the present case.

<sup>3</sup> At the time TMA filed an amicus curiae brief at the district court level, KMCF's webpage was located on KMC's website. At some point after that brief was filed, KMCF created a separate website.

has frequently disregarded corporate entities when the purpose of creating a corporate entity is to limit the liability of the shareholders, otherwise known as “piercing the corporate veil.” *Castleberry v. Branscum* explains when a court should disregard the corporate fiction, including: where a corporation is organized and operated as a mere tool or business conduit of another corporation; where the corporate fiction is resorted to as a means of evading an existing, legal obligation; and where the corporate fiction is used to circumvent a statute. 721 S.W.2d 270 (Tex. 1986).

Chief Justice Rogelio Valdez of the Thirteenth Court of Appeals agreed in his Dissenting Opinion<sup>4</sup>:

“Instead, it appears to me that Grass’s claim is that “a sham to perpetrate a fraud” has occurred because the Foundation is a sham non-profit organization set up to circumvent section 22.353. See *Castleberry v.*, 721 S.W.2d at 272. A sham to perpetrate a fraud can be found even when two entities have observed all corporate formalities of separateness, as the majority has found in this case. See *id.* at 271–72. This theory may be applied when a corporation wishes to circumvent a statute, as alleged here. See *id.* at 272. When the theory is that a sham to perpetrate a fraud has occurred, “neither fraud nor an intent to defraud need be shown as a prerequisite to disregarding the corporate entity.” *Id.* The party claiming that the corporation is perpetrating a fraud need only show that the separate corporation’s existence would bring about an inequitable result. *Id.* at 273. The question of injustice or inequity is a question of fact and common sense. *Id.* Based on the evidence presented, I would conclude as a matter of law that a separate entity, the Foundation, was created in order to allow Knapp to indirectly solicit funds from the public; thus, circumventing the legislative intent of section 22.353. For these reasons, I respectfully dissent.”

KMC made the bizarre argument that: “If Grass’ unproved allegation is correct that the hospital and the Foundation are the same, then the resolution of this appeal is simple. The hospital would clearly fall within the exemption in Section 22.355(2), and

---

<sup>4</sup> Appendix “6”.

Grass would not be entitled to any documents.” (Brief for Appellant at Court of Appeals page 13, footnote 4) KMC goes on to repeat the argument that: “the hospital would not be subject to the statute at all if the hospital and the Foundation were “one and the same,” because the contribution would not come from an outside source.” (Reply Brief for Appellant at Court of Appeals page 8, footnote 2). This logic conveniently ignores the fact that the origin of the funds was donations from the public. Were that not the case, KMC would never have thought it had to create KMCF in the first place.

When the purpose, or result, of creating a related entity is to prevent the parent entity from being held accountable to the public it relies on for financial support, the parent entity should be estopped from asserting an exemption from laws requiring financial disclosure. To allow such an exemption, under these facts, would be completely inconsistent with the public policy behind the requirements for disclosure and accountability.

### **III. Public policy requires accountability for hospitals that rely on donations.**

#### **A. Texas public policy is established by the Texas legislature, not by the non-profit entities it regulates.**

KMC states in its reply brief that “(t)he federal government obviously believes that (IRS form 990) is sufficient for purposes of transparency, especially after it was amended a couple years ago.” (Reply Brief for Appellant at Court of Appeals page 8) This argument<sup>5</sup> ignores the fact that sections 22.353 and 22.355 (and their predecessor statutes) were enacted *after* IRS form 990 was already in use. Grass’ request was based on

---

<sup>5</sup> Which was echoed by every other amicus curiae brief filed on Appellant’s behalf at the Court of Appeals.

state law. To borrow KMC's logic, the Texas legislature obviously believed that the IRS form 990 was insufficient to bring transparency and accountability to certain corporations. Since the IRS form 990 revisions, the Texas legislature has not repealed the statute. IRS form 990 must be filed by non-profit corporations whether or not they solicit and receive donations from the public in amounts exceeding \$10,000 in a year. It is designed for a different purpose than the Texas legislation.

KMC suggests repeatedly (Brief for Appellant at Court of Appeals pages 11, 12, 20) that if this Court decides to enforce the statute based on public policy, it should limit the records, books and reports to be made available to only those which trace the donor's funds. Section 22.353, however, is not so limiting. No purpose would be served by requiring those who solicit donations from the public to only be transparent in regards to those donations. No one questions that KMC spends some money wisely. The concern is that KMC receives donations from the public and, in the absence of transparency and accountability, is freed up to do things the public would consider foolish with the money it would have otherwise had to spend. If one thinks there is a thief hiding in their attic, one would point the flashlight in every corner, not just one. It would be unwise to point it in a single corner and then conclude there is no thief because one didn't see a thief in that corner. It is one thing for the public to donate \$100,000 so that the hospital can purchase a new piece of equipment. It is quite another for that same donation to be made, the hospital to purchase that same piece of equipment and then give the CEO a \$100,000 raise. What donor would have given the same gift if they knew that to be the result?

This situation is not unique. A recent article in Health Affairs discusses the same

problem, as it relates to Freestanding Children’s Hospitals (FCHs). “FCHs are reporting record profits and paying their executives millions, all while soliciting for community donations. (See Appendix “15”). In 2009, Senators investigating the matter noted that a nearly \$1 million salary and benefit package for a non-profit executive is “not only questionable on its face but also raises questions about how the organization manages its finances in other areas.” *Id.* Such a compensation packages seems to be at odds with the non-profit mission to provide a public service. “Just trust us” is not a policy this law sought to protect.

Another potential situation in which access by the public to a non-profit hospital’s records, books and reports under section 22.353(b) would be beneficial is if the hospital were trying to ripen itself for sale. Perhaps the public would not be so willing to donate to a non-profit hospital if it knew the hospital were about to be sold to a for-profit system. In fact, amicus Texas Hospital Association previously supported legislation which would have strengthened the standards for non-profit to for-profit conversions of hospitals. Texas Hospital Association testified in favor of Tex. H.B. 1331, 75th Leg., R.S. (1997) which addressed issues of notice, public participation, preservation of the non-profit entity’s assets for charitable purposes and independent oversight of those assets. (See Appendix “16”).

KMC expresses concerns that hospitals (“economic competitors”<sup>6</sup>) will gain an “unfair competitive advantage” if KMC is forced to make these records, books and

---

<sup>6</sup> Brief for Appellant at Court of Appeals page 16.

reports available. “Economic competitors” is a strange way for a non-profit hospital to refer to other hospitals. Amici would argue that being able to accept over \$700,000 in one year from public donors, all while operating in tax-exempt status, without being held accountable is the real competitive advantage. In any event, concerns over economic competition should be secondary to accountability and transparency of non-profit hospitals to the public which they rely upon for donations and exist to serve.

Amici Curiae Christus Health, Memorial Hermann Healthcare System, The Methodist Hospitals System, Texas Children’s Hospital and Texas Health Resources do not believe that corporations who solicit and actually receive contributions from the public should have accountability to that same public. They argue that “it is the Attorney General, as the representative of the people of the State of Texas, and not the general public, that is vested with broad power to examine corporate books and records.” (brief at Court of Appeals at page 10). TEX. BUS. ORG. CODE § 12.151 allows the Attorney General to examine books and records, but not at the expense of other authorized parties. Further, the plain language of the statute at issue here addresses that notion: “A corporation commits an offense if the corporation fails to maintain a financial record, prepare an annual report, or make the record or report available *to the public* in the manner required by Section 22.353.” TEX. BUS. ORG. CODE § 22.354 (emphasis added).

**B. Public policy demands an even higher burden of accountability for non-profit hospitals.**

Even if this Court believes that parent entities should not be accountable for the

donations they solicit through related entities, this Court should recognize a higher burden of accountability among non-profit hospitals entrusted with patients' health and well-being.

Hospitals exist to serve the health, safety and well-being of the individuals in their communities. As a product of this purpose, hospitals ensure that the citizenry are able to both contribute to and enjoy the benefits of community. Hospital medical staff physicians practicing at a facility have a special interest in hospital operations and in its prudent use of resources. TMA and AMA member physicians practicing at non-profit Texas hospitals, such as KMC, should be able to require an accounting as provided for under Texas law.

Non-profit hospitals receive various tax-exemptions from federal, state and local governments with the expectation that, in return, they will provide benefits to the community. These important functions and benefits are precisely why Rep. Martinez, the O.W.L.S., TMA and AMA strongly support the transparency of financial records for non-profit hospitals that rely on the public for funding. This transparency promotes quality patient care and accountability. Every employee of and patient treated at a hospital is affected by the financial decisions made by those in charge. Financial misdeeds by hospital leadership are paid for by patients and employees. Patient safety is compromised when hospitals do not use their financial resources to further quality of care.<sup>7</sup>

---

<sup>7</sup> Amici Curiae Texas Hospital Association, Texas Association of Voluntary Hospitals, Texas Organization of Rural & Community Hospitals agree with this sentiment in page 4 of their brief at the Court of Appeals. "(M)any nonprofit organizations have limited financial resources and imposing additional requirements and costs on these organizations will take funds away from their mission and programs." Amici Curiae Christus Health, Memorial Hermann Healthcare System, The Methodist Hospitals System, Texas Children's Hospital and Texas Health

**CONCLUSION AND PRAYER**

The district court's orders were consistent with the legislative intent of the statute and sound public policy. Therefore, this Court should grant Grass' motion for rehearing, grant Grass' petition for review, reverse the decision of the court of appeals and render a judgment declaring that Knapp is not exempt from the disclosure requirements of Section 22.353 of the Business Organizations Code.

Respectfully submitted,

By: 

DONALD P. WILCOX  
State Bar Number 21449000  
JEFFREY S. GDULA  
State Bar Number 24056729  
TEXAS MEDICAL ASSOCIATION  
401 WEST 15TH STREET  
AUSTIN, TEXAS, 78701  
Phone: (512) 370-1300  
Fax: (512) 370-1636

*Attorneys for Amici Curiae The  
Honorable Armando Martinez, the  
O.W.L.S., Texas Medical Association  
and American Medical Association*

---

Resources also express concern that "valuable and significant resources will be diverted from care of Texas patients." (page 1) Fortunately for them, the statute explicitly provides that corporations "may charge a reasonable fee for preparing a copy of a record or report." TEX. BUS. ORG. CODE § 22.353(b). Managing records and records requests would seem to be part of a hospitals core business. If the hospitals and other corporations are still concerned, there is nothing in the law that requires them to solicit and actually receive donations from the public.